IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Lt.Col.V.S.Sankhla v. Union of India & Ors.

S.B.CIVIL WRIT PETITION NO.2193/2002
under Article 226 of the Constitution of India.

Date of Order : 23rd March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. K.K.Shah, for the petitioner.
Mr. Ravi Bhansali, for the respondents.

BY THE COURT :

By an order dated 26.5.2000 passed by Adjutant General's Branch, Army Headquarters, New Delhi petitioner's claim to disability pension was rejected on the count that diseases recorded in release medical board held at the time of petitioner's release from services had been found to be neither attributable to nor aggravated by the military services.

The petitioner gave a challenge to the order dated 26.5.2000 by way of filing an appeal before the competent appellate authority. By communication dated 19.6.2001 it was communicated to the petitioner that the appellate committee after considering the appeal rejected the same by holding that the disease on account of which the

petitioner was invalided out of service are constitutional disorders. Hence this writ petition is preferred by the petitioner.

A reply to the writ petition has been filed on behalf of the respondents. It is stated in reply to the writ petition that the disease because of which the petitioner was invalided out from service neither attributable to nor aggravated due to military service and the diseases are of constitutional nature, therefore, the petitioner is not entitled for disability pension.

Heard counsel for the parties.

The petitioner was invalided out from services because of certain diseases. The medical board in its opinion in quite unambiguous terms stated that disability was not existing before entering into service. This fact clearly shows that the disease on basis of which the petitioner was invalided out from services is not constitutional disorder. It is also pertinent to note that the medical board in its opinion no where mentioned that the disease on basis of which the petitioner is to be invalided out from services was of such nature that it could not be possible to detect the same at the time of enrollment in services. It is also relevant to note that the medical board in its opinion in quite unambiguous terms stated that the diseases

No.2 and 3 occurred due to stress and strain of service. In view of it, it is wrong to say that the disease on basis of which the petitioner was invalided out from service is neither attributable to nor aggravated due to military service. It is also wrong to suggest that the disease on basis of which the petitioner was invalided out from service is a constitutional disorder. The medical board no where in its opinion stated so. Even it is assumed that the disease on basis of which petitioner was invalided out is a constitutional disorder then too there is no doubt that the same was aggravated due to military service. The respondents, therefore, have wrongly denied disability pension to the petitioner.

In view of it the writ petition is allowed. The order impugned dated 19.6.2001 passed by Section Officer, Government of India, Ministry of Defence, and the order dated 26.5.2000 passed by Adjutant General's Branch, Army Headquarters, New Delhi are hereby quashed and the respondents are directed to release disability pension to the petitioner from the date the petitioner was invalided out from services. The petitioner shall be entitled to all consequential benefits.

Cost of the petition is made easy.

( GOVIND MATHUR ),J.

kkm/ps.